p. 19 - 11.63

Legislature other Documents
relating to the
Massachusetts Court of
Hutchinson Papers

For the Judiciary Committee.

1869.

LEGISLATIVE and other documents having reference to, or bearing upon, the "Hutchinson papers". Chronologically arranged. [Boston?1869?] 47p.

Caption title.
Half-title: For the judiciary committee.
Imperfect: p.19 mutilated.

LEGISLATIVE AND OTHER DOCUMENTS

HAVING REFERENCE TO, OR BEARING UPON,

THE "HUTCHINSON PAPERS."

CHRONOLOGICALLY ARRANGED.

[Mass. Archives, Vol. 26, p. 146.]

EXTRACT from letter of Gov. Hutchinson to Richard Jackson, Esq., dated Aug. 30, 1765.

"Besides my plate and family pictures, household furniture of every kind, my own, my children and servants' apparel, they carried off about £900 sterling in money, and emptied the house of everything whatsoever, except a part of the kitchen furniture, not leaving a single book or paper in it, and have scattered or destroyed all the manuscripts and other papers I had been collecting for thirty years together, besides a great number of publick papers in my custody."

[Mass. Archives, Vol. 6, p. 320.]

EXTRACT in the handwriting of Gov. Hutchinson. [1765.]

Public notice given.—"If any of the above articles, or any plate, men's or women's apparel be offered for sale by any persons, or seen in the possession of any persons of suspected characters, it is desired notice may be given to either of the lieutenant-governor's sons at their warehouses in Boston, and whereas a manuscript history of the province from the present charter to the year 1730 was among the spoil, a part of which has been found, if any of the remaining sheets should be discovered, it is desired they may be sent, together with any other of the lieutenant-governor's papers or books, to the Reverend Mr. Eliot."*

[EXTRACTS from the printed copy of the "Journals of the Provincial Congress of Massachusetts," published agreeably to a Resolve passed March 10, 1837.]

COMMITTEE OF SAFETY.

APRIL 29, 1775.

Upon a motion made,—

Voted, That orders be given to General Thomas for seizing Governor Hutchinson's papers.

* "When lieut.-gov. Hutchinson's house was pillaged, and pulled to pieces by an infuriated mob, his books and MSS. were thrown into the streets, and were in danger of being completely destroyed. Dr. [Andrew] E.[liot] made every exertion to save them. Several trunks of MSS., among them the second volume of the history of Massachusetts Bay, were preserved by his care and attention, and he spent much time in assisting to arrange them."—*Eliot's Biographical Dictionary, p.* 191.

MAY 1, 1775.

Voted, That General Thomas be and he hereby is directed and empowered to stop the trunks mentioned to be in Col. Taylor's hands, until this committee send some proper persons to examine their contents.*

[MONDAY,] May 15, 1775, A. M.

Ordered, That Mr. Fisher, Col. Field and Mr. Bullen, be a committee to examine the letters of Governor Hutchinson,† lately discovered, and report to this Congress such letters and extracts as they think it will be proper to publish.

[TUESDAY,] May 16, 1775, Afternoon.

Ordered, That Mr. Freeman and Doct. Holten be added to the committee appointed to examine Hutchinson's letters.

* The following is a letter from General Thomas, dated May 2, 1775:—

"GENTLEMEN:—In consequence of directions from the Committee of Safety, I sent an officer, on whom I could depend, to the house of Governor Hutchinson, who brought off all the papers he could find in that house; but I was informed that Colonel Taylor, of Milton, had lately taken several trunks out of the governor's house, not many days ago, in order to secure them from being plundered. I immediately sent another messenger to Col. Taylor for all the papers that belonged to Governor Hutchinson which he had in his possession. He sent me for answer, he did not know of any papers that belong to said Hutchinson; but just now comes to inform me that there are several trunks in his house, which he took as aforesaid, which he expects will be sent for very soon. I suspect there may be papers in said trunks, and if it is thought proper, two or three judicious persons be sent to break open and search for papers, he will give them his assistance. This, gentlemen, is submitted to the consideration of the honorable committee.

"I have, gentlemen, the honor to subscribe myself, your most obedient humble servant,

"JOHN THOMAS.

"*Roxbury Camp*, May 2, A. D. 1775."

† The following account of the discovery of the letter-books of Governor Hutchinson, containing his correspondence with the ministry and with private individuals, is copied from "Gordon's History of the American Revolution," vol. I., p. 356:—

"When he [Governor Hutchinson,] quitted the province, all his furniture was left behind at his seat in Milton. After the Lexington engagement, the committee of the town removed it, in order to save it from being totally ruined. Mr. Samuel Henshaw, desirous of seeing how the house looked when stript of all the furniture, repaired thither with the gentleman who had the key. He went, at length, up into a dark garret, where he discovered an old trunk, which he was told was left behind, as it contained nothing but a parcel of useless papers. Curiosity led him to examine them, when he soon discovered a letter-book of Mr. Hutchinson's which he secured, and then posted away to Doct. Warren, to whom he related what had happened; on which an order was soon sent to Gen. Thomas, at Roxbury, to possess himself of the trunk. It was brought to his quarters, and there, through the imprudent exultations of some about the general, the contents were too often exposed to persons resorting thither, and some single letters conveyed away; one [was suppressed] for the public good, it being thought that if the same was generally known it might be of disservice in the present moment, as it had not a favorable aspect upon the staunch patriotism of Mr. Hancock. The letter-books and other papers were afterwards taken proper care of."

These interesting manuscripts were deposited and are still retained in the archives of the State.

MONDAY, May 22, 1775.

[Whereas, a number of men, some of whom have, in times past, by the good people of this province, been raised to the highest places of honor and trust, have become inimical to this colony; and merely on principles of avarice have, in conjunction with the late Governor Hutchinson, been trying to reduce all America to the most abject state of slavery; and as well to avoid the just indignation of the people, as to pursue their diabolical plans, have fled to Boston, and other places, for refuge:]

[Therefore, *Resolved*, That those persons, among whom are the mandamus counsellors, are guilty of such atrocious and unnatural crimes against their country, that every friend to mankind ought to forsake and detest them, until they shall give evidence of a sincere repentance, by actions worthy of men and Christians; and that no person within this colony shall take any deed, lease, or conveyance whatever, of the lands, houses, or estates of such persons. And it is hereby recommended to the committee of inspection, in every town in this colony, to see this resolve fully enforced, unless in such cases as the Congress shall otherwise direct.]

MAY 29, 1775.

It being expected that the present congress will be dissolved this night, and hearing that one volume of copies of Mr. Hutchinson's letters are in the hands of Capt. McLane, at the upper paper mills in Milton, which volume may be of use to this colony, if in the hands of the Provincial Congress; therefore

Resolved, That the Rev. Mr. Gorden, of Roxbury, be desired and empowered to receive from said Capt. McLane all such copies as are in his hands, or in any other hands, and to be accountable to the present or some future congress for the same.

[Extracts from the Records of the Committee of Safety, p. 85.]

Whereas, Mr. Edmund Quincy, of Stotingham, has represented to this committee that sundry household goods and other effects, now or late the property of Thomas Hutchinson, Esq., and other persons publickly known to be also enemies to the rights and liberties of America, are hid in several places in and near Milton, which property will probably be lost or wasted, unless proper care is taken of the same for such persons as may hereafter justly claim the same; therefore

Resolved, That said Quincy be and hereby is impowered to receive and convey to this committee, at Cambridge, all such goods and effects as aforesaid, for the use of such person or persons as the

honorable congress or some future congress or house of representatives of this colony may order; he also producing to this committee, the congress or house of representatives an account of all the articles he may so receive, the names of the persons from whom he may receive the same, and an account of the charges that may arise from such salvage and removal. And he also is hereby empowered to press, if necessary, such teams as may be needed for removing such effects. Also,

Resolved, That this be immediately transmitted by the hands of said Quincy to the honorable congress, now sitting at Watertown, for their approbation or disapprobation.

WEDNESDAY, June 7, 1775, Afternoon.

Ordered, That Mr. Orne and Mr. Vose be of the committee appointed to collect the letters of the late Governor Hutchinson, in the room of Doct. Perkins and Mr. Ellis, who are absent.

TUESDAY, July 4, 1775.

A resolve of the committee relative to the goods of Thomas Hutchinson, Esq., and others, hid in and about Milton, was read, and committed to Major Bliss, Col. Grout and Mr. Crane.

[Extracts from the General Court Records, Vol. 33, p. 130.]

Records of the Great and General Court of Assembly for the Massachusetts Bay in New England, begun and held at Watertown, in the county of Middlesex, on Wednesday the twenty-sixth day of July, 1775.

IN THE HOUSE OF REPRESENTATIVES, August 18, 1775.

Ordered, That Colonel Orne and Mr. Cushing, with such as the honorable board shall join, be a committee to consider what is proper to be done with the letters of the late Governor Hutchinson, and how they shall be preserved.

Sent up for concurrence.

JAS. WARREN, *Speak'r.*

IN COUNCIL, August 19, 1775.

Read and concurred, and John Adams, Esq., is joined.

S. ADAMS, *Sec'y.*

The committee above named report that it is of great importance that the letters and other papers of the late Governor Hutchinson be carefully preserved, as they contain documents for history of great moment; and that evidence, in the handwriting of a man

whose nefarious intrigues and practices, have occasioned the shedding of so much innocent blood, and brought such horrid calamities on his native country, may be preserved for the full conviction of the present and future generations; and therefore that such of the letters and papers aforesaid as are not now in the custody of the Honorable Samuel Dexter, Esq., at Dedham, be delivered to him, and together with those, already under his care, faithfully kept by him, until the further order of this court, and that such of them be published from time to time as he shall judge proper.

JOHN ADAMS, *per order.*

IN COUNCIL, August 19, 1775.

Sent down for concurrence.

Read and accepted.

SAM'L ADAMS, *Secr'y.*

[Extracts from the Mass. Archives, Vol. 208, p. 227.]

IN THE HOUSE OF REPRESENTATIVES, 23d March, 1776.

Whereas, The mandamus counsellors, commissioners of the custom and others, the open and avowed enemys to the rights of their country and the cause of liberty, have been compelled, by the terror of the American arms and the apprehension of the resentment of a justly incensed people, to depart the town of Boston, at any time since 19th April, 1775, and before 20 March instant, abandoning not only their houses and real estates, but also, in their hasty and precipitate flight, their personal and other moveable effects to a very considerable value,—

Resolved, That Mr. Brown, Mr. Sp'k'r Cooper, Deac'n Rawson, Mr. Pitts and Col'n Sartel be a committee to repair to the town of Boston, and there take or cause to be taken just and true accounts of said houses and real estates, personal and other moveable effects, the property of the before mentioned mandamus counsellors and others, to commit the charge and care of said estates and effects to such suitable persons as they may judge proper, and to make report of their proceedings herein as soon as may be, that this court may take such farther order thereon as may be necessary and fitting.

Sent up for concurrence.

WILLIAM COOPER, *Sp'r pro tem'e.*

IN COUNCIL, March 25th, 1776.

Read and concurred as taken into a new draught.

Sent down for concurrence.

PEREZ MORTON, *D. Sec.*

In House of Representatives, March 25th, 1776.

Read and concurred.

Sent up. William Cooper, *Sp'r pro tem'e.*

Consented to: W. Sever. W. Spooner. Joseph Gerrish. T. Cushing. John Whetcomb. Jed'h Foster. James Prescott. I. Palmer. Chas. Chauncy. S. Holten. Jabez Fisher. Moses Gill. B. White. John Taylor. B. Lincoln.

[Mass Archives, Vol. 208, p. 226.]

In the House of Representatives, 23d March, 1776.

Whereas, The mandamus councellors, commissioners of the customs and others, open and avowed enemies to the rights and liberties of America, have departed the town of Boston, through fear of the American arms and the just resentment of their injured countrymen, since the nineteenth day of April, 1775,

Resolved, That Mr. Brown, Mr. Speaker Cooper, Deacon Rawson, Mr. Pitts and Colo. Sartell be a committee to repair to the town of Boston, and take or cause to be taken a just and true inventory of all the estate, real and personal, of all kinds, belonging to such persons as have departed the said town in manner as aforesaid, and report the same to this court as soon as may be, that such further proceedings may be had thereon as shall be thought proper; and that said committee, in the mean time, cause such effects to be secured in such manner as to prevent any embezzelment thereof.

Recorded page 683.

Endorsed—"Resolve to secure tories' estates in the town of Boston."

The following are inventories of the real and personal estates of those persons who have been inimical to the rights of America, and have fled from Boston, and are herein recorded by order of the committee of the general court appointed for that purpose, vizt.: Thomas Hutchinson, Thomas Hutchinson, Ju'r, and Elisha Hutchinson:—

At Widow Stoddard's:—
6 mahogany chairs.
1 mahogany case of draws.
2 looking glasses.
4 sacking bottom bedsteads.
1 pr. dogs.
1 pr. kitchen hand-irons.
1 mahogany fire-screen.
1 square snap table.
1 card table.

3 3½-feet mahogany tables.
1 mahogany cradle.
1 walnut chamber table.
1 round snap table.
1 close stool.
3 small marble slabs.
1 round chamber table.

At Doct'r Eliot's:—
1 mahogany bureau.
Desk; a chaise and harness.
1 desk and book-case, glass doors.
1 four-feet mahogany table.
1 painted screen.
1 handsome 8-day clock.
2 small mahogany stands.
1 small box case-knives.
12 rich mahogany hair-bottom chairs.
6 do. furniture check.
2 arm-chairs.
2 mahogany bedsteds.
1 pallat bedstead and bed.
1 mahogany fire-screen.
1 small stand.
6 straw-bottom kitchen chairs.
1 black walnut chamber table.
1 pair large brass andirons.
1 pair dogs.
1 glass frame for a time-peice.
2 tin dish covers.
1 china jarr.
1 bird cage.
1 pair table leaves.
2 leather bottom easy chairs.
2 roundabout horse-hair do.
46 pewter plates and dishes.
1 spitt; 1 frying-pan.
1 tin cover.
1 dish kettle.
1 dripping pan.
2 broken lanthorns.
2 rich mahogany arm-chairs.
1 mahogany cooler.
3 pictures.
1 mahogany card-table.
1 copper ship stove.
3 iron kettles.
1 four-feet pine table.
1 chariot and harness.
1 buby hutch.
1 horse saddle.
1 chest of draws.
1 sacking bottom bedstead.
10 odd chairs.
A parcel of books and papers of little value.
The large mansion house, out-houses, stables, wharves, stores, &c., &c.

At. Doct'r Clarke's:—
1 chimney glass.
1 mahogany bureau.
Desk; 1 easy chair.
4 large pictures, 2 broke.
1 glass lamp.
2 glass salvers, 1 broke.
13 stone plates and dishes.
1 sett furniture.
Curtain vallents.
1 horse net.
2 window curtains, furniture check.
3 do. cushions.
6 stuff-back chamber chairs.
6 leather bottom chairs.
4 horse-hair do.
1 bed bolsters and 2 pillows.
A case containing 4 elegant gilt looking glass.

[Mass. Archives, Vol. 208, p. 328. Gen. Court Records, Vol. 34, p. 718.]

In the House of Representatives, April 3d, 1776.

Whereas, This court have received information that considerable parts of the real and personal estates of the mandamus councillors, commissioners of the customs and other open and avowed enemies to the rights and liberties of America, who have departed this colony since April 19th, 1775, are now in the possession of persons

who have clandestinely taken the same; and others, under pretence of gift, sale or attachment, claim a right to hold and enjoy such estate and effects, by which practises the public or individuals may be greatly injured; for prevention whereof,—

Resolved, That the committee appointed to take inventories of and to secure, till the further order of this court, the estate and effects of said absconders in the town of Boston, be and hereby are empowered to cause every such person or persons as they know or have good cause to suspect have in their occupation or possession any estate, late the property of the aforesaid mandamus councillors, &c., and them to examine thereon, and, if need be, to require answers upon oath respecting the concealment or conveyance of said effects, as the law allows in similar cases with respect to the effects of intestates; and said committee are also authorized and directed to take into their possession and secure such estate and effects, (as also the estate and effects of any persons in Great Britain, which, by vertue of powers of attorney, were under the care and direction of said mandamus councillors, &c.,) until the further orders of this court, any attachment or civil process made or commenced since the 19th of April last notwithstanding.

[Mass. Archives, Vol. 209, p. 107.]

In the House of Representatives, May 2, 1776.

Whereas, By a resolve of this court in March last, a committee was appointed, after the enemy fled from Boston, to repair to the town of Boston, and there take possession of houses and real estates personal and other moveable effects belonging to mandamus councellors and others that were left in the said town by any person who went off with the fleet and army, and to keep the same in their possession till the further order of the general court. And whereas, afterwards, vizt., on the 19th day of April last, a resolve passed this court impowring the committees of correspondence, &c., to lease out the real estates of certain persons therein particularly mentioned, and to return an inventory of all personal estate belonging to such persons as they should receive into their possession as by the same resolve will fully appear.

And whereas it is apprehended by some persons that the resolve last mentioned may interfere with the resolve for appointing the committee aforesaid to take possession of the personal estates of those who went off from Boston with the fleet and army; therefore

Resolved, That the committee appointed by the House of Representatives for the purpose first mentioned, be and they hereby are

fully authorized and impowred to retain in their possession all such real and personal estate as they have already taken or hereafter may in pursuance of their first appointment take into their possession, and lease out said real estates as the committee of correspondence, &c., are authorized to do till the further order of the great and general court of this colony, the resolve of the 19th of April notwithstanding: *provided, always*, that untill the further order of the general court there be allowed to the wives and children of said aforesaid persons as are above described so much out of their respective estates, or the improvement thereof, as is necessary, in the judgement of the committee, for their support, they being unable otherways to support themselves.

And whereas sundry articles of the estates above mentioned may be liable to perish, it is therefore further resolved that the committee first aforesaid be and they hereby are directed and empowered to dispose of such perishable articles and such only, by public sale, and render an account of the proceeds to the general court as soon as may be.

[Mass. Archives, Vol. 209, p. 437.]

To the Honorable the General Assembly for the Colony of the Massachusetts Bay, convened at Watertown May 29th, 1776.

May it please your Honours,—By virtue of a Resolve of the general court of the 19th of April last, we, the committee of correspondence, safety and inspection, have proceeded to take into our care and have leased out the real estate of the late Governor Hutchinson, (lying in Milton,) as follows, viz.:—

To Mr. Samuel Henshaw, Ju'r, the dwelling-house barn, stable, yard and garden, at	£13	16*s.*	6*d.*
Capt. Daniel Vose, part of the land, at	21	8	2
Mr. Nehemiah Clap, a part of the land, at . . .	10	11	11
Mr. Adam Davenport, a part of the land, at . . .	7	17	9
Mr. Moses Haden and John Box, an out-house and part of the land, ...	4	4	0
Mr. Joseph Jones, a part of the land, at	7	16	8
The whole amounting to	£65	15*s.*	0*d.*

Of the personal estate, we have received into our care and taken an inventory of the following articles, viz.:—

Two coaches.
One brass kettle.
Two common house chairs.
One roundabout chair.
One iron pot.
One looking glass.
One plough.

The remainder of the personal estate, consisting chiefly of household furniture, as we understand, was taken away from said Hutchinson's mansion house by order of the selectmen and committee of correspondence *last* year, and no inventory taken of them, (except by cart loads,) and delivered into the care of Colon'l William Taylor; and we, the present committee, after having received the Resolve of the 19th of April last, respecting the personal as well as real estate of our enemies, thought it our duty to take an inventory of said personal estate, and accordingly applyed to said Col. Taylor for admission for that purpose repeatedly, and shew him the order of court; but he peremptorily forbid us entering the apartment where said personal estate was, and said he did it in the name of the committee, (with whom he had consulted;) and we have, in consequence of said refusal, omitted taking an inventory of the goods in said Taylor's custody.

We would also inform the honorable court that there is a real estate in the town of Milton, owned by a person or persons in England, which estate was some years past been verbally lett to Capt. Daniel Vose, by Henry Lloyd, then of Boston; and we, being uncertain whether it fell under our care, beg leave to ask the opinion of the honorable court concerning it. Therefore beg this honorable court what shall be don with this and the above affair, that committee may know what steps to take.

JOSEPH BADCOCK, *per order.*

IN THE HOUSE OF REPRESENTATIVES, }
Watertown, June 27, 1776 }

Resolved, That the committee of correspondence, safety and inspection of the town of Milton be and they are hereby impowered to take into their possession the personall estate of Thomas Hutchinson, late of said Milton, which is in the possession of Coll. Taylor, in said Milton, or wherever else it may be found, excepting such as may have been otherways disposed of by order of the general court, and to follow the directions of this court respecting the same as in similar cases provided.

And farther resolved, That said committee take into their care the estate let to Cap'n Daniel Vose by Henry Loyd, late of Boston, who fled with the ministerial fleet, observing the direction of court with respect to the estates of refugees.

ACTS AND LAWS passed by the Great and General Court or Assembly of the Massachusetts Bay, in New England, begun and holden at Boston, in the county of Suffolk, on Wednesday, the twenty-seventh day of May, Anno Domini 1778; and from thence continued by adjournments to Wednesday, the seventh day of April following and then met.

[CHAP. IX.]

AN ACT to confiscate the estates of certain notorious conspirators against the government and liberties of the inhabitants of the late province, now State, of Massachusetts Bay.

Whereas, The several persons herein mentioned have wickedly conspired to overthrow and destroy the constitution of government of the late province of Massachusetts Bay, as established by the charter agreed upon, by and between their late majesties William and Mary, late king and queen of England, &c., and the inhabitants of said province, now State, of Massachusetts Bay; and also to reduce the said inhabitants under the absolute power and domination of the present king, and of the Parliament of Great Britain; and as far as in them lay have aided and assisted the same king and parliament in their endeavors to establish a despotic government over the said inhabitants.

Be it enacted by the Council and House of Representatives in General Court assembled, and by the authority of the same,

That Francis Bernard, baronet, Thomas Hutchinson, Esq., late governors of the late province, now State of Massachusetts Bay, Thomas Oliver, Esq., late lieutenant-governor, Harrison Gray, Esq., late treasurer, Thomas Flucker, Esq., late secretary, Peter Oliver, Esq., late chief-justice, Foster Hutchinson, John Erving, Jr., George Erving, William Pepperell, baronet, James Boutineau, Joshua Loring, Nathaniel Hatch, William Browne, Richard Lechmere, Josiah Edson, Nathaniel Rea Thomas, Timothy Ruggles, John Murray, Abijah Willard, and Daniel Leonard, Esqs., late mandamus counsellors of said late province, William Burch, Henry Hulton, Charles Paxton, and Benjamin Hallowell, Esqs., late commissioners of the customs, Robert Auchmuty, Esq., late judge of the vice-admiralty court, Jonathan Sewall, Esq., late attorney-general, Samuel Quincy, Esq., late solicitor-general, Samuel Fitch, Esq., solicitor or counsellor at law to the board of commissioners, have justly incurred the forfeiture of all their property, rights and liberties, holden under and derived from the government and laws of this State; and that each and every of the persons aforenamed and described shall be held, taken, deemed and adjudged to have renounced and lost all civil and political relation to this and the other United States of America, and be considered as aliens.

Be it enacted by the authority aforesaid,

That all the goods and chattels, rights and credits, lands, tenements and hereditaments, of every kind of which any of the persons herein beforenamed and described were seized or possessed, or were entitled to possess, hold, enjoy or demand, in their own right, or which any other person stood or doth stand seized or possessed of, or are or were entitled to have or demand to and for their use, benefit and behoof, shall escheat, annure and accrue to the sole use and benefit of the government and people of this State, and are accordingly hereby declared so to escheat, enure and accrue, and the said government and people shall be taken, deemed and adjudged, and are accordingly hereby declared to be in the real and actual possession of all such goods and chattels, rights and credits, lands, tenements and hereditaments, without further enquiry, adjudication, or determination hereafter to be had, anything in the act entitled "An Act for confiscating the estates of certain persons commonly called absentees," or any other law, usage, or custom to the contrary notwithstanding: *provided, always,* that the escheat shall not be construed to extend to, or operate upon any goods, chattels, rights, credits, lands, tenements, or hereditaments, of which the persons aforenamed and described, or some other in their right, and to their use, have not been seized or possessed, or entitled to be seized or possessed or to have, or demand as aforesaid since the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five.

And be it further enacted by the authority aforesaid,

That all debts justly due from any of the persons aforenamed and described to any subject of the United States of America, before the said nineteenth day of April, A. D., one thousand seven hundred and seventy-five, shall be payable out of their respective estates.

And be it further enacted by the authority aforesaid,

That where the wife or widow of any of the persons aforenamed and described shall have remained within the jurisdiction of any of the said United States, and in parts under the actual authority thereof, she shall be entitled to the improvement and income of one-third part of her husband's real and personal estate, after payment of debts, during her life and continuance within the said United States; and her dower therein shall be set off to her by the judges of probate of wills, in like manner as it might have been if her husband had died intestate and a liege subject of this State.

And be it further enacted by the authority aforesaid,

That if any person whose estate is by this act adjudged to have

escheated as aforesaid, shall not have any wife or widow entitled to any part thereof by virtue of this act, shall have any relations (collateral kindred excepted,) who may not be of sufficient ability to support themselves without some allowance out of the estate of such person to whom they stand related as aforesaid, that the judge of probate of wills, who shall have the right of appointing agents for such estate, be, and he hereby is authorized and directed to fix a competent allowance from time to time, for the comfortable support of all such relations, having respect to the value of such estate.

[Mass. Archives, Vol. 154, p. 410.]

In House of Representatives, May 5th, 1780.

Whereas, John Brown, William Cooper, Dea'n Edward Rawson, John Pitts and Josiah Sartell were, by a Resolve of the general court, of the twenty-third day of March, in the year 1776, appointed a committee to take into their custody all the personal estate of such persons as voluntarily went off with the enemy at the time Boston was evacuated, and according to the orders of the court to dispose of the same, and to account for the proceeds; and whereas said committee have neglected to settle their accounts, notwithstanding the frequent orders of the general court for that purpose;

And whereas the good people of this State have manifested great uneasiness that the committee of sequestration, so called, have not exhibited, as yet, a fair accounts of the disposal of the aforesaid goods and chattels, and obtained an honorable discharge for so much of the same as they may have disposed of by private or public sale; therefore,

Resolved, That the Hon'ble William Phillips, Esq., the Hon'b. Nathan Cushing, Esq., Samuel Osgood, Esq., Lemuel Kollock, Esq., and Mr. Nathan Frazier be and hereby are appointed a committee to examine into the conduct of the aforesaid John Brown, William Cooper, Dea'n Edward Rawson, John Pitts and Josiah Sartell; and also to send for and examine any persons or papers which they may think necessary for the purposes aforesaid.

And whereas it may be necessary that the committee appointed to examine into the conduct of the said committee of sequestration should be attended with some civil officers, in order to prosecute the business with dispatch; therefore it is

Resolved, That such of the constables of the town of Boston, in the county of Suffolk, as the said committee shall direct and require to attend them, shall and hereby are directed to give their atten-

dance accordingly; and are also empowered and directed to serve and execute any summons, order or other process which the said committee shall issue in pursuance of the power and authority given them as aforesaid.

And it is further resolved, That the president of the said committee, for the time being, shall be and hereby is authorized and directed to administer a proper oath to any person or persons whom the said committee shall think fit to examine as a witness or witnesses, touching the subject-matter of their enquiry.

And such summons, order or other process which shall be issued by said committee as aforesaid, shall be signed by the clerk appointed by said committee, and not by any member of said committee.

And all persons are directed to yield obedience to every such summons, order or other process, on pain of imprisonment for their contempt or refusal, by order of said committee.

And said committee are hereby directed to proceed upon said business immediately, and make report of their doings to the general court as soon as may be.

Sent up for concurrence.

JOHN HANCOCK, *Sp'k'r.*

IN COUNCIL, May 5, 1780.

Read and concurred.

JOHN AVERY, *D. Sec.*

Consented to:	JER. POWELL.	OLIVER PRESCOTT.
	A. WARD.	N. CUSHING.
	T. CUSHING.	THOS. DURFEE.
	S. ADAMS.	AARON WOOD.
	I. FISHER.	SAML. NILES.
	H. GARDNER.	A. FULLER.
	B. WHITE.	EDW'D CUTTS.
	T. DANIELSON.	I. SIMPSON.

[Mass. Archives, Vol. 142, p. 421.]

IN THE HOUSE OF REPRESENTATIVES, October 14, 1783.

Ordered, That the secretary be and he hereby is directed forthwith to make application to the Honorable Samuel Dexter, Esq., and the Reverend William Gordon, Doctor of Divinity, for the letters of the late Governor Hutchinson, which were found within this State, after he left the same, and to receive the same letters from any person in whose possession they may be, and to file them carefully among the papers of this State.

Sent up for concurrence.

TRISTRAM DALTON, *Sp'k'r.*

In Senate, October 15, 1783.

Read and concurred as taken into a new draft.

Sent down for concurrence.

S. Adams, *Presid't.*

In the House of Representatives, October 16, 1783.

Read and concurred.

Tristram Dalton, *Sp'k'r.*

Approved.

John Hancock.

[Mass. Archives, Vol. 142, p. 422.]

COMMONWEALTH OF MASSACHUSETTS.

In the House of Representatives, October 14th, 1783.

Whereas, In the year 1775 certain letters were found in the mansion house of Thomas Hutchinson, Esq'r., late governor of the province of the Massachusetts Bay, written by the said Hutchinson to persons of public character and others in England and elsewhere, which letters tend to the discovery of the plans which had been secretly laid for the destruction of the rights, liberties and privileges of the then British colonies; and whereas the said letters were committed to the care of the Honorable Sam'l Dexter, Esq'r., with permission to the Rev'd Doct'r William Gordon to take and select such of them as he should judge proper for immediate publication;

And whereas, it is highly expedient that papers so adapted as the said letters appear to be to mark the leading principles and characters in the late happy American Revolution, should be safely kept among the archives of this Commonwealth, that so the historian and others may avail themselves thereof, under the direction of the general court;

Resolved, That the said Sam'l Dexter, Esq'r., Dr. William Gordon, and all others who are possessed of any of the said letters of the said Thomas Hutchinson, Esq'r., be and they hereby are required to return the same into the secretary's office without delay.

Ordered, That the secretary serve the said Sam'l Dexter, Esq'r., and Doct'r William Gordon with an attested copy of the foregoing resolution, and also to publish the same in one of the Boston, the Salem, Worcester and Springfield newspapers.

[Mass. Archives, Vol. 142, p. 423.]

Dedham, October 18, 1783.

Sir:—I this morning received your letter, inclosing a resolve of the honorable general court, *requiring* me to return, "without

delay," into the secretary's office, certain letters of the late Governor Hutchinson.

These letters, and other papers, very soon after they were discovered in his house in Milton, were brought over to Watertown, where the Massachusetts Congress, so called, then sat. They lay open for the inspection and perusal of everybody who had curiosity enough to look into them; and in consequence of the free access which all persons, without discrimination, had to them, I suppose it was owing that letters, either written *by* or *to* him, have been scattered about the State. I remember to have heard it said, two or three years after they were found, that some of them were shewn in towns very remote from the capital, although I do not recollect the names of such towns.

That there might be no further pillaging, they were, by a resolve of that public body, committed to me, accompanied *with a desire that I would "select such of them as I should judge proper for immediate publication,"* and cause them to be printed in newspapers, or in a pamphlet, with remarks, if I should think them needful.

On my motion the Reverend Dr. Gordon had permission to look over the manuscripts at his pleasure, and had a concurrent power given him to publish and comment upon them.

In the year 1776, the general court, on a report of a committee of both houses, of which the Honorable Mr. Adams, now in Europe, was chairman, recommitted them to my keeping, charging me with their safe preservation, as "containing valuable documents for future history;" and every letter-book and paper which were in my custody at that time, and that have come into my hands since the passing the last mentioned resolve, are now in my possession; nor are any missing of the whole number delivered to me at Watertown, unless some are retained by Dr. Gordon, who had a right, from the vote of the provincial congress, to be possessed of any of them for the purpose above mentioned; but who, immediately after the date of the resolve of the general court, giving me the *sole* care of them, sent to me, as I understood him, all he had taken to his house.

In faithfulness to my trust, I have all the letter-books and papers safely deposited in a large box, weighing, with its contents, near one hundred pounds, which, since my receipt of the resolution of the honorable court, I have nailed up, and keep in readiness to be delivered to any messenger or servant of their honors who may be *ordered* to call upon me for it.

I am, sir, your most obedient servant,

SAMUEL DEXTER.

[Journal of House of Representatives, 1821.]

COMMONWEALTH OF MASSACHUSETTS.

In the House of Representatives, Thursday, February 13, 1821.

Ordered, That the Secretary of the Commonwealth be directed to make out a statement of the present condition of the public records and documents belonging to the Commonwealth, and showing what progress has been made in copying the same, the said report to be presented at the next session of the legislature.

[Under this Order the Secretary made a report in which occurs the following passage, being the whole of his report having any bearing upon the question of the Hutchinson Papers. After specifying "Court Records, Journals of Provincial Congress, sundry letters, records, and other MSS., miscellaneous papers, &c.," under "class 4th—other files and documents," the report reads (page 11):

COMMONWEALTH OF MASSACHUSETTS.

SECRETARY'S OFFICE, BOSTON,
January 1, 1846.

To the President and Fellows of the Massachusetts Historical Society.

GENTLEMEN:—In the course of some recent proceedings for the completion and arrangement of the ancient papers in this office, my attention has been drawn to three volumes called the "Hutchinson Papers," now in the library of the Historical Society. I suppose these papers to have come into our library by mistake, and to be the property of the Commonwealth.

They are referred to in the record of the meeting of the Historical Society on the 27th day of January, 1820, as having been "presented to the society by the permission of the governor and council." I have had a careful examination made of the council records

of the period, and do not find any proceedings of the governor and council to this effect. Nor would it have been within the constitutional competency of the executive department of the government. Such a disposition of the papers could only have been made by an Act or Resolve of the legislature, and no law so disposing of them appears to have been passed.

I have very respectfully to request that an examination may be made into these facts, in order that, if they, and my opinion founded upon them, be confirmed, the society may take measures for restoring the volumes in question to the custody of this office.

I have the honor to be, &c.,

JOHN G. PALFREY.

SECRETARY'S OFFICE, BOSTON,
January 19, 1847.

it would not have been within the competency of the executive department of the government, the papers being subject to such a disposal only by an Act or Resolve of the legislature, and no law so disposing of them appearing to have been passed.

I accordingly requested that an examination might be made into the facts in order that if they, and my opinion founded upon them, should be confirmed, the society might take measures for restoring the volumes in question to the custody of this office.

Not having received any reply to this application, I ask permission respectfully to repeat the request, that it may receive the attention of the society.

I have, &c., JOHN G. PALFREY.

SECRETARY'S OFFICE. BOSTON, July 27. 1847.

To the President and Fellows of the Historical Society.

GENTLEMEN:—On the nineteenth day of January last, I made a representation to the Historical Society respecting certain manuscript volumes entitled the Hutchinson Papers, supposed by me to belong to the archives of the Commonwealth, and to have been placed in the library of our society by mistake. May I respectfully ask to be informed of the decision or action had by the society on this subject.

I have the honor to be, gentlemen, with great respect,
Your obedient servant,

JOHN G. PALFREY.

Extract from the Annual Report of Hon. John G. Palfrey, Secretary, January 5th, 1848.
[House Document, No. 2, 1848, page 9.]

Entertaining the opinion that certain writings, called the "Hutchinson Papers," formerly in this office, were transferred to that collection through a mistake, I have made applications to the society to have the subject considered, in order that if my impression should prove to be well founded, the papers might be restored to the custody of the Commonwealth. I have received no reply to the applications, nor has anything come to my knowledge to change my opinion on the subject. My views, and the manner of presenting them, are on record in the letter-book of this office, under the dates of January 1st, 1846, and January 19th and 27th, 1847.

[Although not a legislative document the following paper from the Massachusetts Historical Society, (furnished by Dr. Ellis,) is here inserted as showing the action of the Society upon Dr. Palfrey's letters.]

[*Report of Committee of Massachusetts Historical Society.*]

MASS. HISTORICAL SOCIETY, Oct. 25th, 1849.

The Committee appointed with authority to address to the general court a memorial in relation to the statement made by the secretary of the Commonwealth, concerning certain papers in possession of the Society, and claimed as the property of the State, and to take such other measures in the premises as they may deem expedient, respectfully submit the following report:—

The Committee are entirely satisfied, that it is not expedient to address any memorial to the general court, since, notwithstanding the repeated representations and requests of the secretaries of the Commonwealth, the general court has not indicated the slightest intention of setting up any such claim as they recommend; and therefore it would seem superfluous, if not obtrusive, to trouble them with a refutation of it.

Nor do your Committee think it necessary or expedient to adopt any other measure whatever, as they fully concur with your former committee in the opinion, that the open and undisputed possession of these papers by the Society, as their own, for more than a quarter of a century, constitutes a title which cannot be impeached.* Considering that the Society holds these papers, from whomsoever received, not for any pecuniary emolument to itself or its members, but on the implied trust, that they shall be kept and preserved by it for the purpose of historical investigation, it is, in the opinion of your Committee, the duty of the Society to maintain its title to them, and if any claim to them should hereafter emanate from competent authority, they recommend, that it be resisted on the ground above stated.

The Committee will now proceed to consider for the purpose of information merely, and not as a part of their report, the ground presented in the letters of the late secretary of the Commonwealth, for the claim put forth by him. It is, in substance, that these papers are referred to, in the records of the meeting of the Historical Society on the 27th January, 1820, as having been "presented to the Society by the permission of the governor and council;" and that the governor and council had no right to give away the property of the State.

Now this argument rests entirely on two assumptions, both of which are necessary to support it, yet neither of which is admissible:

1st. That these papers, i. e. all of them, for all are claimed, are referred to in the record mentioned.

2d. That the papers referred to in that record were the property of the State.

The record reads thus: "The additional letters found by Mr. Secretary Bradford among the papers of Governor Hutchinson, and presented to the Society by the permission of the governor and council, were referred to the publishing committee." *The additional letters*—a very singular mode of expression, if intended to designate the whole miscellaneous contents of these three folio volumes. It seems hardly possible to look at those contents, consisting of from two to

* Revised Statutes, cap. 120, § 20.

three hundred distinct documents of the most various character, (which were then not bound up together but in loose files,) not one-half of them letters, since of the 466 folios composing the collection, only 170 are occupied by letters and their superscriptions, and to believe, that it was intended to describe the whole collection by the words "*additional letters;*" words plainly importing, that they were an addition to papers of the same character already belonging to the Society. Indeed, such a belief can be accounted for only by the fact, that this gift from the governor and council was found recorded, but no record of the gift from any other quarter of the residue; and hence the late secretary appears, perhaps not unnaturally, to have concluded, as other members may possibly have done, that this whole collection of papers was given at the same time, regarding them after they were bound up under one title, as one thing.

Fortunately it so happens, that we know precisely what were the papers actually presented by Mr. Bradford, and can clearly explain how the rest may have been previously given without any entry on the record. At first, the donations of members of the Society were not acknowledged nor recorded, but merely those of strangers. Those of members were only mentioned in lists made out by them severally and put on file, and the early files are lost.* Very soon however, all donations were recorded and occasionally acknowledged; and after the year 1813, complete lists of them all were regularly published by the Rev. Dr. Holmes, corresponding secretary. It was his custom to set against the name of each donor all the articles given by him since the making up of the last preceding list, whether given altogether, or at various times during the interval. The list published in 1822, comprising all donations made after the preceding list published in 1819, enumerates several papers, which it describes particularly, and places together under the heading, "*Old letters and papers from Governor Hutchinson's MS. Collection;*" stating them to have been given by "*Alden Bradford, Esqr., Secr'y of State.*"†

These are the only papers stated to have been given by him during this period, and of course are the papers presented by per-

* II. Hist. Coll., V. 2, p. 285, and Record of meeting, 9 April, 1791.

† II. Hist. Coll., V. 9, p. 370.

NOTE. The entry of record April 9, 1791, referred to in the above note, is as follows :—

"The committee who were appointed to inquire what collections could be made towards forming a Historical Library delivered in lists from each member as on file."

The other notes refer to works in print easily found.

mission of the governor and council; and they are aptly enough designated by the language of the record. The above heading must mean the collection *originally made by* Governor Hutchinson, for of course it was not then his, since all the property *really belonging to him at any time*, after April 19, 1775, became that of the State. The only ground assigned by the secretary for considering the papers given by Mr. Bradford the property of the State is, that they were given to the Society by the authority of the governor and council, which would rather seem to prove the contrary. May they not have been given for the very reason that they did not belong to the State? They certainly did not belong, where they are said to have been found, among the Hutchinson papers in the State House, with which they have not the most remote connection. Admitting that these papers had been seized and carried to the State House with those of Governor Hutchinson, it does not follow that they then belonged to him. He might have parted with the whole collection, and afterwards these particular papers might have been borrowed from it, or in many other ways have come into his possession, without being his property; in which case they would not become, by confiscation, the property of the State. And it might appear upon the face of the papers themselves, or by some memorandum accompanying them, that they did not belong to him. This is a much more natural and proper supposition than that of gross ignorance or misconduct in the governor and council. Yet we are called upon to presume that they were totally ignorant of their duty in this respect, or that they wilfully violated it. Whereas, the natural and legal presumption is, until the contrary be clearly proved, that they knew their duty and fulfilled it. They knew, as well as we do, that they had no right to give away the property of the State, and they could have no disposition and no motive to give it away without right. The fact then, that they did give away this parcel of papers, or permit it to be given, which is the same thing, instead of proving that it was the property of the State, proves that it was not so, and that they knew it.

A brief account of the two collections, that of the State and that of the Society, may tend to throw some light on this matter, and to show that, instead of gross ignorance or fraud being imputable to any body, the conduct of alf concerned in the transaction was upright, intelligible and consistent. The collection in the State House consists of four thick folio volumes, the first three of which contain about 1,500 letters to and from Governor Hutchinson, most of them from him, dated between 1761 and 1774, with a few brief accounts of legislative proceedings or popular commotions, written

by him, and absolutely nothing else. They are all in fair condition and exhibit no appearance of injury from exposure to the weather. These volumes are very properly labelled "*Hutchinson Correspondence.*" The other volume contains the MS. of the first part of the second volume of his history, the draft of a long letter not addressed, copies of some documents relating to the witch cases, and a copy of his commission as governor, all but the last in his own handwriting. The copy of the history is much stained and torn, and soiled by mud. This volume is labelled "*Hutchinson's MS. History, Vol. 2, etc.*" The papers contained in these volumes are known to have been taken, after the battle of Lexington, from a garret in the house at Milton, where Governor Hutchinson had resided.* They were bound up by order of the State about eight years ago.

The collection of the Historical Society is contained in three smaller volumes in folio, and is of the most miscellaneous character, consisting perhaps of 250 papers. The earliest is a letter from Mr. Levett at Ashby to John Cotton, at Boston in England, with a draft of Cotton's answer in his own hand on the same sheet, dated in 1625; the latest one of Gideon Hawley, dated in 1770. A few appear to have been added to the collection after 1765. Those belonging to it before are, at least a large proportion of them, much stained and soiled, and some of them marked with the print in mud of a naked foot.

These papers are undoubtedly a part of the collection of materials for the history of Massachusetts, stated by Governor Hutchinson, in the preface to the first volume of his history, to have been formed by him. The whole collection, together with the MS. of part of the second volume of his history, was thrown into the street in the rain by the mob who plundered his house in 1765, as he tells us in the preface to his second volume, where he also states, that a good portion of that MS. was saved "by the care and pains of his good friend and neighbour, Rev. Mr. Eliot, who received into his house all the books and papers which were saved." He states that this MS., though much injured, was so far legible, that he was able to supply the rest, and transcribe it. For this purpose he must have taken it away from Mr. Eliot's house, and it is without doubt that now in the State House.

It is not improbable that either then, or when he went to England in 1774, Governor Hutchinson may have given to his friend who saved them, the papers remaining in his house; and if so,

* Journals of Provincial Congress, page 224, note.

unless he differed entirely from all other collectors of MSS., it must have been with the injunction that they should never be separated.

If it should be found that Mr. Eliot, or his son and successor, John Eliot, who must have known all the circumstances, treated this collection, or any part of it, *as his own property*, this would be a strong proof, in the absence of all other evidence, that such a gift was in fact made.

Governor Hutchinson particularly mentions one work as an important part of the collection, and this may help to guide us to the whole; for where an important part of such a collection is found, there it is natural to look for the rest. The work is the "*MS. of Hubbard's History of New England*," of which it is well known that there was only one copy in America.

Now, as early as 1791, this MS. belonged to the Historical Society.* It was given to it "*among other rich contributions*," by the Rev. John Eliot, one of its founders.† The MS. was certainly a part of the collection. Is it not highly probable that these *rich contributions* were the residue, namely, the papers in question? Neither the MS. of Hubbard nor the other papers are mentioned on the records of the Society, but they were no doubt included in the donor's list among the lost files. These papers were arranged, indexed and bound by the late B. R. Nichols, at the request of the Society, in 1822.

It may be noted, that while the collection at the State House consists entirely of letters to Governor Hutchinson, and of letters and other MSS. of his writing; by far the greatest part of the whole collection being written by him; that of the Society is of as miscellaneous a character as possible; and that while the earliest date at the State House is Dec. 14, 1761, there are but eleven papers in the Society's collection of a later date than 1700, and only six later than 1724, not one among them being written by Governor Hutchinson, or having the most remote connection with the papers in the State House. Now the papers presented by Mr. Bradford have no connection with Governor Hutchinson's affairs whatsoever, but are of the same miscellaneous character as the Society's. All of them but one are dated before 1700, and that one in 1707. They are bound up with the other Hutchinson papers belonging to the Society; and on examination it is found that two-thirds of them are stained and mud-marked like so many of the

* I. Hist. Col., V. 1, p. 2.
† II. Hist. Col., V. 5, prefatory notice.

papers saved by Mr. Eliot after the mob. It is impossible to read the list of them, as given by Dr. Holmes, without the suspicion, that they originally belonged to this collection. Do not all these circumstances convert that suspicion into rational belief? Now supposing,—and any not unreasonable supposition ought to be resorted to, in order to support so long a possession, and to shield the character of the Executive from the reproach which it is found necessary to cast upon it to maintain a pretence of claim to any of these papers,—supposing that Governor Hutchinson had given the collection to Mr. Eliot, and had afterwards borrowed these papers from it, or had taken them inadvertently when he took his MS. history, and that the fact that they belonged to it appeared by some memorandum found among the papers themselves, which is by no means impossible; supposing also that Mr. Bradford, a member of this, knew that the collection belonged here;—then the governor and council by permitting the papers to be given to the Society, were only restoring them to the true owners.

However this may be, it is perfectly obvious that, upon the reasoning of the late secretary of the Commonwealth himself, the State has not the shadow of a claim to the whole three volumes, but only to the papers given by Mr. Bradford, with the permission of the governor and council. And even should it be admitted that these were the property of the State, and that the governor and council had no right to give them to the Society, yet, nevertheless, the open and undisturbed possession of a quarter of a century gives the Society a clear and unquestionable right to *hold* them. And, considering the long lapse of time, the death of the agent employed in the transaction, and the other circumstances of the case, it is the opinion of your Committee that it is the duty of the Society to set up the statute of limitations against any claim to them from any quarter. This, indeed, is one of those cases for which that beneficent statute was mainly intended to provide, and which eminently prove its equity and its wisdom.

F. C. Gray,
N. Appleton,
G. W. Blagden,
Peleg W. Chandler,
Alex'r Young,
Committee.

COMMONWEALTH OF MASSACHUSETTS.

In Senate, Monday, May 27, 1867.

Ordered, That the Committee on the Library consider the expediency of directing the Secretary of the Commonwealth to obtain from the Massachusetts Historical Society any books, papers or documents now in their possession, the property of the Commonwealth.—*Senate Journal*, page 797.

[Senate Document, No. 279.]

COMMONWEALTH OF MASSACHUSETTS.

In Senate, May 30, 1867.

The Committee on the Library, to whom was referred an Order to inquire into "the expediency of directing the Secretary of the Commonwealth to obtain from the Massachusetts Historical Society any books, papers or documents now in their possession, the property of the Commonwealth," having carefully considered the same, respectfully submit the following Report:—

The following facts appeared in evidence before the Committee: The documents probably referred to by the Order are certain volumes known as the "Hutchinson Papers." These papers, when Governor Hutchinson's property was sold at auction, having been confiscated, were secreted in a bed and sold. After their discovery and the fact was made known, they were repurchased by the State at a cost of fifty pounds. They were placed with the other records in the department of the secretary of the Commonwealth, and remained there until 1820, when Mr. Bradford, then secretary, and also a member of the Historical Society, carried the papers which make the first three volumes, and gave them to the society. In January of 1846, Mr. Palfrey, then secretary, and likewise a member of the society, having his attention called to the fact, wrote a letter to the officers of the society, desiring their return. Receiving no answer, he wrote again, in January, 1847, and also in July of the same year. No notice whatever was taken of these letters, and so the matter rested until 1858. In the secretary's report of 1848, reference is made to these letters, copies of which are subjoined to this Report. (See House Doc. No. 2 of 1848.)

In 1858, the legislature by a Resolve directed the secretary of the Commonwealth to prepare and cause to be printed the New Plymouth Records. (See chap. 41 of Resolves of 1858.) Mr. David Pulsifer was appointed, and in prosecution of that work desired to

examine these papers. He went to the library of the Historical Society and requested permission to use them for that purpose; but his request was refused in pursuance of a rule of that society. He was therefore subjected to the disadvantage of making his record without the aid of valuable information contained in those papers. Last February, Mr. Dawson of New York desired to print the sermon of Rev. John Wheelwright, contained in the "Hutchinson Papers,"—a sermon of considerable historical value and importance,—but for a long time was unable to obtain a copy.

These papers, relating to the early history of the colony, extending over a period of thirty years, and transferred by mistake from the custody of the State to that of a society having no right to them, the Committee unanimously believe ought of right to be returned. This the Historical Society are not only unwilling to do, but even refuse an officer of the Commonwealth, whose property they are, when appointed to complete its early records, access to their information. The later manuscripts are still in the custody of the State, and these are needed to render our archives complete.

Besides, the "State House" being fire-proof, while the building used by the society is not, is a far safer repository for such valuable documents, valuable alike as a part of the State's history and as containing information which ought of right to be accessible to any person desirous of examining their contents. In the custody of the Historical Society, they are closed to those who may desire their perusal; when in the possession of the State, they would be within the reach of all.

Believing that they are clearly the property of the Commonwealth, the Committee think they should be returned.

The society was notified of the meeting of the Committee, but did not see fit to appear.

They therefore report the following Resolve.

Per order,

Chas. J. Noyes, *Chairman.*

COMMONWEALTH OF MASSACHUSETTS.

In the Year One Thousand Eight Hundred and Sixty-Seven.

Resolve concerning the "Hutchinson Papers."

Resolved, That the governor be directed and enjoined to take such steps as to him seem necessary and proper to procure the immediate restitution of the books, manuscripts and other documents now in the possession of the Massachusetts Historical Society belonging to the Commonwealth.

The Resolve was finally passed by the legislature as follows:—

COMMONWEALTH OF MASSACHUSETTS.

In the Year One Thousand Eight Hundred and Sixty-Seven.

RESOLVE concerning the "Hutchinson Papers."

Resolved, That the governor be requested to ascertain whether any books, manuscripts or other documents now in possession of the Massachusetts Historical Society, are the property of the Commonwealth, and to take such measures as he may deem proper to determine the question of title and procure the restoration of the same to the library of the Commonwealth; and that he report to the next general court the results of his action under this resolve.

Approved June 1, 1867.

COMMONWEALTH OF MASSACHUSETTS.

EXECUTIVE DEPARTMENT, BOSTON, March 19, 1868.

To the House of Representatives.

By a Resolve, chapter eighty-five, of the year eighteen hundred and sixty-seven, concerning the "Hutchinson Papers," the Governor was requested to ascertain whether any books, manuscripts or other documents now in possession of the Massachusetts Historical Society, are the property of the Commonwealth; and to take such measures as he might deem proper to determine the question of title and procure the restoration of the same to the Library of the Commonwealth; and report to the present General Court the results of his action under the Resolve.

I inclose herewith copies of the correspondence which has occurred between the Executive and certain officers of the Historical Society relative to this subject. It will be perceived from the communication of Messrs. Ellis, Parker and Washburn that the title of that society to the papers in dispute rests upon allegations which it is not in the power of the Executive to controvert without a thorough investigation, which it is more practicable for the legislature than this Department to pursue.

I therefore respectfully suggest that all the facts necessary to a just conclusion in this matter can be best ascertained upon an investigation made by a legislative committee clothed with power to send for persons and papers, and to examine witnesses under oath. This power seems essential in a case like the present; but the Governor does not possess it under our laws.

ALEXANDER H. BULLOCK.

COMMONWEALTH OF MASSACHUSETTS.

EXECUTIVE DEPARTMENT, BOSTON, Jan. 10, 1868.

To Col. THOMAS ASPINWALL, *Vice-President of the Massachusetts Historical Society, Boston.*

DEAR SIR:—In the absence of the President of your society, the Hon. Robert C. Winthrop, I have the honor to address this communication to you as its official representative.

By the Resolves of 1867, c. 85, the legislature of the Commonwealth requested me to ascertain whether any books, manuscripts, or other documents now in the possession of the Massachusetts Historical Society are the property of the Commonwealth, and to take such measures as he may deem proper to determine the question of title, and procure the restoration of the same to the library of the Commonwealth; and to report to the present legislature the result of my action under the Resolve.

From such information as I have been able to obtain, the Massachusetts Historical Society have in their possession certain papers known as the "Hutchinson Papers," which are the ones referred to in the legislative Resolve, and which were at one time the property of the Commonwealth. I am not aware of any way in which the title of the Commonwealth has ever been divested.

In order that I may discharge my duty to the Commonwealth, I request of you to inform me whether the Massachusetts Historical Society has such books, manuscripts or other documents, referred to in the Resolution of the legislature in its possession; if so, to give me a statement in detail of what they are; and to inform me by what title, if any, the Society claims to hold them.

I have the honor to be, very respectfully, your obedient servant,

(Signed,) ALEX. H. BULLOCK,
Governor of Massachusetts.

BOSTON, January 13, 1868.

To His Excellency ALEXANDER H. BULLOCK, *Governor of the Commonwealth of Massachusetts.*

SIR:—In reply to your Excellency's letter of the tenth instant, addressed to me, as Vice-President of the Massachusetts Historical Society, I have the honor to state that the subject of the "Hutchinson Papers" is now under consideration by the proper committee of the Society, who will shortly report the result of their investigations.

I hope to place their report in your Excellency's hands at an early day.

I have the honor to remain, with greatest respect, your Excellency's most ob't servant,

(Signed,) THOS. ASPINWALL,
Vice-President of the Mass. Historical Society.

MASSACHUSETTS HISTORICAL SOCIETY,
BOSTON, February 13, 1868.

To His Excellency ALEXANDER H. BULLOCK, *Governor of the Commonwealth of Massachusetts.*

SIR:—In the accompanying letter, addressed by the Massachusetts Historical Society's Committee on the "Hutchinson Papers" to your Excellency, I have the honor to transmit their report in relation to those papers, as intimated in my letter of the thirteenth of last month.

I have the honor to remain, with greatest respect, your Excellency's most ob't servant,

(Signed,) THOS. ASPINWALL,
Vice-President of the Mass. Historical Society.

MASSACHUSETTS HISTORICAL SOCIETY.

At a stated monthly meeting of the Massachusetts Historical Society, on the 13th day of February, 1868, Col. Aspinwall in the chair, it was

Voted, That the report of the committee on the subject of the "Hutchinson Papers," read this day, be accepted.

Voted, That that part of the report which is expressed in the form of a letter to His Excellency, the Governor of the Commonwealth, be adopted by the society as their answer to the communication of His Excellency, of the 10th of January last; and that a copy of the same be transmitted to him by the acting president of society.

Attest:

CHARLES DEANE, *Recording Secretary.*

BOSTON, February 13, 1868.

COMMUNICATION FROM THE MASS. HIST. SOCIETY CONCERNING THE HUTCHINSON PAPERS.

MASSACHUSETTS HISTORICAL SOCIETY,
February 13, 1868.

To His Excellency Governor BULLOCK.

The undersigned, a Committee appointed by the members of the Massachusetts Historical Society, have the honor to address your Excellency in reply to a communication received from you in reference to certain historical papers in the possession of the society, which, it is intimated, may be the property of the State, and therefore reclaimable by it.

Your Excellency refers to a Resolve of the legislature of 1867, chapter 85, requesting you "to ascertain whether any books, manuscripts, or other documents, now in the possession of the Massachusetts Historical Society, are the property of the Commonwealth; and to take such measures as the governor may deem proper to determine the question of title, and procure the restoration of the same to the library of the Commonwealth, and to report to the present legislature the result of his action under this Resolve."

Your Excellency adds, that, as the result of such information as you have obtained, you conclude "that the Massachusetts Historical Society have in their possession certain papers, known as the 'Hutchinson Papers,' which are the ones referred to in the legislative Resolve, and which were at one time the property of the Commonwealth. I am not aware of any way in which the title of the Commonwealth has ever been divested."

Your Excellency therefore asks to be informed whether the Massachusetts Historical Society has such books, manuscripts, or other documents referred to in the Resolution of the legislature, in its possession; if so, that the society give you a statement in detail of what they are, and inform you by what title, if any, the society claims to hold them.

The undersigned, fulfilling their commission, and seeking most respectfully to meet with full candor of reply your Excellency's question, might suggest that the indefiniteness and vagueness of the description of the alleged property of the Commonwealth, supposed to be improperly in the possession of the society, embarrasses their answer.

Whatever, among the masses of the manuscripts in the society's cabinet, might have happened at any time, fitly or unfitly, by accident or by carelessness, to have been disposed either in loose files, or collected in volumes; and whatever bound volumes might have been arranged in print or manuscript on the shelves, under the

designation of "Hutchinson Papers,"—would seem to be included under the vague and undefined terms of the legislative Resolve, and of your Excellency's description.

In connection with this remark, the Committee would beg leave to refer—not without surprise at the sweeping, unqualified and wholly untenable character of the assertion—to a sentence in the report of the library committee of the legislature, May 30, 1867, on which followed the Resolve quoted by your Excellency. In that report it is recited that the State came into possession, by purchase, of certain volumes known as the "Hutchinson Papers," and affirmed that they "were placed with the other records in the department of the secretary of the Commonwealth, and remained there until 1820, when Mr. Bradford—then secretary, and also a member of the Historical Society—carried the papers which make the first three volumes, and gave them to the society."

The seemingly greater definitness of the matter of the assertion in this report is reached by an assumption and an inference which, we respectfully suggest, are wholly unwarranted, and may be most successfully invalidated by a statement of facts on record, and by legitimate inferences to be deduced from them.

The report assumes that, previous to 1820, there was a certain series of volumes, or of documentary materials for volumes, in the archives of the State, obtained by purchase; and that the papers which represent the first three volumes of that series were taken, by his own proper motion and without warrant, by a gentleman who was at the same time both secretary of the Commonwealth and a member of the Historical Society, and were "given" by him to that society. The inference is drawn that certain "Hutchinson Papers" now in the possession of the society constitute that unwarranted "gift."

In replying to your Excellency's questions, the undersigned take the liberty of also keeping in view the above statement, and of meeting its assertions; hoping in this way to offer a full explanation of all the facts of the case within their knowledge, and a justification of the right of the society to the property in question which it now holds.

They believe that all the grounds and evidence on which the supposed claim of the State to the Hutchinson Papers in the society's cabinet rests, are drawn from entries in our own records. They do not understand that the Commonwealth has any inventory, schedule, or calendar of such papers once in its archives which can be identified, by title, contents, or definite description, as now in the society's possession; nor that there is any entry, in the journals

of the State, of any transfer, loss, or known date of the disappearance of such papers from its archives.

The records of the society supply the sole ground of the supposed claim, which is the matter of your Excellency's question, as will appear from the following statement: In January, 1846, the Hon. J. G. Palfrey, being Secretary of State, and also a member of the Historical Society, found in its record of meetings and proceedings this entry, under date of October 28, 1819:—

Voted, "that the letters found among the papers of Governor Hutchinson, and communicated by Mr. Bradford, be referred to the publishing committee."

There is also the following entry, at the next meeting of the society, January 27, 1820:—

"The additional letters found by Mr. Secretary Bradford among the papers of Governor Hutchinson, and presented to the Society by the permission of the Governor and Council, were referred to the Publishing Committee."

The following letter of Mr. Bradford accompanied the parcel of letters, &c., last referred to:—

JAN. 27, (1820.)

DEAR SIR: I send some very old letters and papers, selected from the files left by Gov. Hutchinson, with a list of them.* Some of them have been printed in Hazard, and some in Hutchinson. But many of them were never printed, and are valuable. I have obtained leave of the Council to present them to the Society. They are no part of the files of the Secretary's office.

Yours, A. BRADFORD.

Addressed to "Rev. Dr. Holmes, Cor. Sec'y of the Society. Present."

The records indicate that two additional parcels were received from the same source. On the strength of the supposed evidence thus furnished by these entries in the society's records, Secretary Palfrey inferred that the contents of three volumes in the cabinet, labelled "Hutchinson Papers," were the property of the State, and had been unwarrantably either abstracted or alienated from its archives. Accordingly, in the exercise of what he regarded as his official duty, he addressed to the society, under dates of January 1, 1846, January 19, 1847, and July 27, 1848, three communications on the subject. Though his action was not, at the time, accom-

* This list having served its purpose, appears not to have been preserved, for it is not on file.

panied or followed by any legislative process, the present inquiry is made to proceed upon it.

Your Excellency's question will be substantially answered, so far as our means of information will allow, by an account of the volumes in the society's cabinet, entitled the "Hutchinson Papers"; a sketch of their contents; a reference to the sources from which they were derived; and by a comparison of them with the contents of the volumes in the State archives, with which the committee of the legislature supposed them to constitute, before 1820, a connected series.

The most recently acquired of the "papers" once belonging to Governor Hutchinson, or loaned to him to be used in his historical labors, have been in the possession of the society but one or two years short of half a century. Some of them have been in the cabinet since 1791. They have been contributed from many sources, in answer to appeals resulting from a design referred to in the following extract from the society's records under date April 9, 1791:—

"The committee who were appointed to inquire what collections could be made towards forming an Historical Library, delivered in lists from each member, as on file."

By a vote of the society in 1822, the late Hon. B. R. Nichols procured a mass of these papers, acquired at many times and from various sources, to be arranged, indexed and bound, in three folio volumes, and labelled "Hutchinson Papers." They contain between two and three hundred distinct documents, of the most varied and miscellaneous character and contents.

These number 466 folios, of which 170 folios are letters, and their addresses. Not one of them is in the handwriting of Gov. Hutchinson. Only six of them are of later date than 1724, and only eleven of them of later date than 1700. Only a very few of them indicate that they ever belonged to Gov. Hutchinson, though that most of them had once been in his possession might properly be inferred by a reader of his History of Massachusetts, and from their soiled appearance, occasioned by a fact soon to be mentioned. Indeed, the papers themselves are evidence that their rightful original or inheriting owners belonged to at least four generations. As will presently appear, they have not even the most remote connection with the other collection of Hutchinson Papers in the archives of the Commonwealth.

Most of these papers bear marks of having been crumpled, soiled by mud, and trampled upon. They are evidently in good part the

papers referred to by Hutchinson in the preface to the first volume of his history, in which he says: "Many ancient records and papers came to me through my ancestors, who for four successive generations had been principal actors in public affairs; among the rest a manuscript history of Mr. William Hubbard. I made what collection I could of the private papers of others of our first settlers."

This manuscript copy of Hubbard's History, referred to by Hutchinson, was the only one in the country. It was in the possession of the Historical Society in 1791, as appears by their "Introductory Address" to the public in the first volume of their published collections, 1792. The society acknowledges that "this precious relic was among the rich contributions furnished by Rev. Dr. John Eliot, from his invaluable collection of the treasures of American history and antiquities." (2 Hist. Coll., Vol. V., Prefatory Notice.)

Dr. John Eliot, then, had in the last century presented to the society one very valuable manuscript that had been in the possession of Gov. Hutchinson, and had bestowed that among other "rich contributions." What were these? How came he by them? Do not the present "Hutchinson Papers," in the possession of the society, probably include very many of them, and justify the Committee's referring your Excellency to Dr. Eliot as one of the sources from which they were derived? It is not, indeed, in their power to give a list, by titles and specifications, of these "rich contributions" by Dr. John Eliot. The records previous to 1813 made such detailed specification only of the gifts of persons not members of the society. Those of members were mentioned only in lists made out by the donors, severally, which lists were put on file, and the files are now lost. But the fact that Dr. John Eliot's gift included the manuscript of Hubbard, known to have been in the hands of Hutchinson, and not afterwards challenged as at the rightful disposal of the donor, leads us to conclude that other Hutchinson manuscripts came to us through the same channel. If it be asked how Dr. John Eliot came into possession of them, the following statement may help toward an explanation.

In the preface to the second volume of his History of Massachusetts, (first published in 1767,) Gov. Hutchinson refers to the odium, "the unaccountable jealousy which had been infused into the minds of the populace" against him and his administration, and says that "being thus misguided, they expressed their resentment and rage by breaking into my house, destroying and scattering all my furniture, books, papers, &c." This was the work of the mob that sacked his house in Boston on the evening of August 26,

1765. He gratefully acknowledges compensation for his loss, so far as it was reparable, by a generous public grant; "but," he adds, "the loss of many papers and books in print, as well as manuscript, besides my family memorials, never can be repaired. For several days I had no hopes of recovering any considerable part of my History, [meaning the manuscript of his second volume,] but, by the great care and pains of my good friend and neighbor, the Rev. Mr. Eliot, [Dr. Andrew Eliot, the father and predecessor of Dr. John Eliot,] who received into his house all my books and papers which were saved, the whole manuscript, except eight or ten sheets, were collected together, and although it had lain in the streets, scattered abroad several hours in the rain, yet so much of it was legible as that I was able to supply the rest, and transcribe it. The most valuable materials were lost."

From this statement by Governor Hutchinson, it would appear that from among these mud-stained papers received for protection by Dr. Andrew Eliot, he reclaimed the manuscript of his second volume, to the subsequent fortune and present refuge of which, reference will by and by be made. For anything that is said to the contrary, we may infer that he left the other papers in the keeping of his friend, as a safe depository of historic treasures, from whom they passed into the hands of his son, Dr. John Eliot, not as public property, but as documents appropriate for an historic cabinet, whenever there should be one at hand.

Of other papers described by the governor as among "the most valuable materials" which "were lost," traditionary reports lead us to believe that some, at least, were picked up from the mud, found a safe, if not an appreciative keeping with various individuals, and, together with the mass of the papers in the charge of Drs. Andrew and John Eliot, reached the cabinet of the Historical Society.

It is very certain that Hutchinson himself never regained possession of all his lost papers; and it is probable that the larger portion of those which had been in his house in Boston, which were saved at all, never came into his hands again. The appearance and condition of the present collection substantiate this supposition.

In beginning the publication of a selection from the papers which had thus come into the possession of the Historical Society, the publishing committee of the second series of collections, Vol. 4, says, on page 181, by way of preface:—

"By direction of the Governor and Council of this Commonwealth, the Secretary of State has deposited with the Massachusetts Historical Society a large collection of documents, public and private, which appear to have been

used by the late Thomas Hutchinson, Esq., Governor of His Majesty's Province of Massachusetts Bay, in the composition of that History, which will probably continue to be the best narrative of any of the settlements on this continent. Several of these papers are printed in the collection of papers by Hutchinson, sometimes called the third volume of his History.

"Those here printed have been transcribed with great care, by gentlemen of experience in the chirography of the different periods of their date. In succeeding volumes, other pieces may enrich our collection."

Here, certainly, was a frank avowal of the source whence the society had derived some of the miscellaneous papers which, by purchase, or by loan, or by discovery, or by having been used by Hutchinson, had been called by his name.

It may be noted that the gift which Bradford, in his letter, affirmed that he made to the society by "leave of the Council" is, in the above prefatory note in the collection, said to have been made "by direction of the Governor and Council." This discrepancy of statement the Committee has no means of explaining. It may have been simply an inadvertence of one of the publishing committee. But this frankness of avowal in print is utterly inconsistent with any supposition of a surreptitious or unauthorized transfer of the papers from the State archives to the society's cabinet.

The assertion of Secretary Bradford, above quoted, that the papers sent by him "are no part of the files of the Secretary's office," draws a distinction between them and certain other papers of Hutchinson's, in his charge, which did belong to his files. What these other papers were, and how distinct their character, by what means and for what use the State had obtained them, and the reasons which influenced the governor and council to regard the public archives as the proper depository of them, will soon be made satisfactorily to appear. It is to be remembered and considered that Governor Hutchinson is known to us in the twofold character of a writer of history and a Royal Governor of this Province. Papers bearing his name derive their value and interest from both those employments. The collection of "Hutchinson" documents in the archives in the State house, is in four thick folio volumes. The first three of these, labelled "Hutchinson Correspondence," contain about 1,500 letters, the greater part of them written by Governor Hutchinson, the remainder addressed to him, dated, the earliest in 1761, the latest in 1774; with a few fragmentary accounts of legislative proceedings and popular commotions, from his own pen. The fourth volume, labelled "Hutchinson's MS. History, etc.," contains the manuscript of the first part of volume second of his History, a long letter without address, copies of some documents relating to

the witchcraft trials—all these in his own hand-writing—and a copy of his commission as governor, not in his hand. The manuscript of his history is torn, trampled and mud-stained. The other papers are not. The manuscript of his history having been restored to him as before stated, by Dr. Andrew Eliot, had enabled him to put the work into print in 1767, and had remained in his possession, separated, as may be inferred, from other papers once in his keeping. On June 1, 1774, Hutchinson, having been superseded as governor by General Gage, made his hurried flight to England. Expecting shortly to return, he left his house on Milton Hill, where he had been residing, with its contents undisturbed, in the care of his gardener. The public authorities did not meddle with his property till after the battle of Lexington, April 19th, 1775. His estate was confiscated by an Act of the legislature. This, however, did not of itself give the State a title to his property, but simply instituted a process like administration. But there is abundant evidence that the house had been entered, and books and papers removed, without authority from anybody, in that interval, because sundry persons in the neighborhood were in the possession of the letter-books and other papers when the committee of safety ordered General Thomas, on the 29th April, 1775, to take possession of the Hutchinson Papers.

Sundry trunks containing papers were found in the possession of Col. William Taylor, who lived about a mile from the house, and who is supposed to have been a friend of Hutchinson, and who had probably removed them to his own house, when he found they were not safe where they had been left. The letter-books were found in the hands of Capt. Hugh McLean, or his brother-in-law, Mr. John Boies, and those were the most eagerly sought for, as they were expected to implicate the governor in the obnoxious measures of the British government. It was said at the time that these were found secreted in the sacks of beds. They were delivered up, and the State paid for them £50, as appears by a Resolve of the legislature.

The Provincial Congress appointed committees to examine these documents, and agents to continue in search for more papers. February 3, 1779, the general court passed a special Order to the secretary of the Commonwealth to take charge of these papers. (See Journals of Provincial Congress, p. 224.)

The four volumes of Hutchinson Correspondence, &c., in the State house, were arranged and bound by order of the legislature, about 1841. The interest exhibited by the public authorities in obtaining the papers of the provincial governor, as the above statement indicates, was not at all of an archæological or antiquarian, but en-

tirely of a political character. What papers were purchased by the State does not appear, by any contemporary or any subsequent record. But the fair presumption is, that the volumes in the State house contain them. There is no evidence that the State ever made any other purchase of Hutchinson Papers, or ever received any gift of any such papers. There is no allegation that the State ever had any title or claim, or ever advanced a title or claim, to all the papers which have been obtained by the society, or received from them a common title as "Hutchinson Papers," by being assorted and bound in volumes. The claim set up now for the State can presumably cover only the papers presented by Secretary Bradford. The only evidence adduced by Secretary Palfrey, or by any other person, in support of any claim for the State, is a single paragraph in the Records of the Historical Society, in which, however, no particular papers are mentioned so as to admit of being identified. Beyond this record there is not a particle of evidence that any one of the Hutchinson Papers, now in possession of the society, was ever in possession of the State, or of any officer of the State, or in any place occupied by any officer of the State.

This record fails to intimate, much more to establish, any right whatever on the part of the State. It does not even show that the State ever had any possession of the papers. The fact that papers happen to be within the secretary's office, (supposing some that we now have ever to have been there,) unless they relate to the business of that office, or otherwise show that they pertain to the business of the State, does not show them to be in possession of the State.

That the papers presented by Mr. Bradford, in 1820, may have been in the secretary's office is, perhaps, probable. If so, that they were there without being in the possession of the State, and without any claim of title on the part of the State, is also rendered probable: 1. By the fact that Hutchinson's papers having been scattered in the manner above related, the State, more than ten years afterwards, did not purchase all, and probably but a small part of them, and still possesses what may well be supposed to be the papers thus purchased. 2. By the fact that Bradford, who was a faithful and intelligent officer of the State, having been secretary for twelve years, would never have assumed, even with the consent of the councillors, to give away the property of the State without authority. 3. By the fact that the council of that day would not have given their consent to the alienation of the property of the State, without authority to do so. 4. By the fact that there is no record of any act of the council, and that the record of the society

does not purport, to show that any official measure was attempted or assumed about the transfer of any papers. Mr. Bradford was not governor, and of course any consent of the councillors to any act of his, was not supposed to be official. But without what was supposed to be an official act, none of those gentlemen would have assumed to dispose of the property of the State.

Indeed, the letter of Mr. Bradford, copied above, accompanying the papers contributed by him to the society, makes it quite clear that those papers were not the property of the State. His distinct declaration is, that the papers do not belong to the files of his department. But any papers of this description which were the property of the State, would at that day have belonged to the files of his department. There was then no librarian, nor any library, nor any other place of disposal for such papers, the property of the State, except the office of Secretary of State.

Secretary Bradford was himself engaged in writing a history of the State, and the fair presumption is, that these papers had been handed to him by persons, or the descendants of persons, into whose possession they had come after their dispersion by the mob,—not as a gift to the State, but that he might use and dispose of them in the proper manner, if they were of any value to anybody. Being secretary of State at the time they were received by him at his office, he may have incidentally consulted the council when met on some occasion of business, as to the proper disposition to be made of them. They agreed with him that such papers had better be given to the Historical Society, rather than to the State, to which they were of little if of any importance. Upon this supposition everything is fair and consistent. But upon a supposition that the State had purchased them, or received them as a gift, how could Bradford say that they did not belong to the files of his department: and how could the councillors assume to act as a council, in a matter respecting which they had no authority?

A supposition that Secretary Bradford and the council of the Commonwealth violated their duty, in 1820, by giving away the property of the State, without any authority, is not warrantable by any circumstances of the case, and is not consistent with the character of those gentlemen. But the present claim of the State is based entirely upon such an assumption.

The society cannot consent to be instrumental in any degree in casting such a reproach upon the memory of those distinguished gentlemen. But this it must do, if it acquiesces in this claim.

If the papers which came to us through Secretary Bradford were at the time supposed to belong to the State, the officers and mem-

bers of this society, who received them, might also be considered as implicated in an unwarranted transaction. The duty of the society to them is equally clear.

The society cannot, therefore, consistently with its honor, yield to this claim.

The unchallenged possession of these papers from 1820 to 1847, claiming and using them as its own property,—a period in which such claims are ordinarily barred four times over, and more,—furnishes plenary evidence that the possession of the society was, and ever has been, rightful.

And the abandonment of the claim made by Mr. Secretary Palfrey, and its being suffered to sleep for a term embracing more than two other periods of statutory limitation, complete that evidence.

The undersigned have thus, in the use of the means of information within their reach, offered to your Excellency such answers as they can give to your questions. They think they have indicated the origin and growth of two independent collections of papers, owned or used by Governor Hutchinson. They see no reason for believing that they ever formed one collection, or were contemporaneously in his possession. Still less will the facts warrant the theory that the two present collections once constituted a single series of documents, all in the State archives, and unwarrantably divided so as to "give" the Historical Society the matter of three volumes, the Commonwealth retaining the other four.

The mass of the papers in the society's possession do not appear ever to have been in the charge of the public authorities; they are not related to Governor Hutchinson at all officially, nor do they bear the marks of his ownership. There may be even within the bindings some which he never saw.

Most respectfully yours,

(Signed,) George E. Ellis.
Emory Washburn.
Joel Parker.

[House Doc. No. 350.]

COMMONWEALTH OF MASSACHUSETTS.

House of Representatives, May 14, 1868.

The Committee on the Judiciary, to whom was referred the Message of His Excellency of the 19th day of March last, respecting the Hutchinson Papers, report:—

That they have examined evidence on the subject, and are of opinion that it is one of difficulty and involved in a good deal of obscurity. That if His Excellency is unable, under the authority

conferred on him by the Resolve, chapter 85 of the year 1867, to make a satisfactory agreement with the Massachusetts Historical Society respecting the said papers, the matter cannot be settled except by litigation in the courts. The Committee are also of opinion that with the Resolve above named, of the year 1867, and the laws respecting the duties of the attorney-general, the governor has discretion and authority sufficient to set on foot the proper legal measures, if he shall think such course expedient.

The Committee therefore advise that the subject may well be left in the hands of His Excellency under said Resolve, and that no further action on the part of this House is advisable. Per order,

R. H. Dana, Jr., *Chairman.*

[Memorial of David Pulsifer, presented to the Legislature of 1869.]

COMMONWEALTH OF MASSACHUSETTS.

To the Honorable the Senate and House of Representatives in General Court assembled.

The Memorial of David Pulsifer respectfully represents: That by an Act of the general court, passed in the year 1778, "all the goods, chattels, rights and credits, lands, tenements and hereditaments, of every kind of which "Thomas Hutchinson, Esq., and other persons named in said Act, "were seized or possessed, or were entitled to possess, hold, enjoy or demand, in their own right, or which any other person stood or doth stand seized or possessed of, or are or were entitled to have or demand to and for their use, benefit and behoof, shall escheat, enure and accrue to the sole use and benefit of the government and people of this State, and are accordingly hereby declared so to escheat, enure and accrue, and the said government and people shall be taken, deemed and adjudged, and are accordingly hereby declared to be in the real and actual possession of all such goods, chattels, rights and credits, lands, tenements and hereditaments, without further enquiry, adjudication or determination hereafter to be had; anything in the Act entitled 'An Act for confiscating the estates of certain persons commonly called absentees,' or any other law, usage or custom to the contrary notwithstanding."*

And your memorialist further represents, that previous to the passage of said Act, to wit, in the year 1765, books and papers, public and private, saved on the evening of August 26th of that year, when the house of Governor Hutchinson was sacked by mob, were received into the house of Rev. Andrew Eliot, D. D., and were in the possession of Dr. Eliot at the time of the passage of said Act.

* For copy of this Act, see page 15.

In the year 1775, letters, letter-books and papers belonging to Governor Hutchinson, discovered in his house in Milton, were placed in the custody of Hon. Samuel Dexter, of Dedham, and were retained by him until the year 1783, when, by the general court, it was "*Resolved*, That the said Sam'l Dexter, Dr. William Gordon, and all others who are possessed of any of the said letters of the said Thomas Hutchinson, Esq'r, be and they hereby are required to return the same into the secretary's office without delay," and they were accordingly returned; but the books and papers in the possession of Dr. Eliot appear to have been transferred by his son, the Rev. John Eliot, D. D., to the Massachusetts Historical Society, of which he was a member; and in the year 1820, Hon. Alden Bradford, a member of the Historical Society, then Secretary of the Commonwealth, sent to the same society a large collection of documents, public and private, "selected," as he says, "from the files left by Gov. Hutchinson." In January, 1846, Hon. John G. Palfrey, then Secretary of the Commonwealth, and a member of the Historical Society, in a letter to the president and fellows of said society, says: "In the course of some recent proceedings for the completion and arrangement of the ancient papers in this office, my attention has been drawn to three volumes, called the 'Hutchinson Papers,' now in the library of the Historical Society. I suppose these papers to have come into our library by mistake, and to be the property of the Commonwealth;" and requested that an examination might be made, and the society to "take measures for restoring the volumes in question to the custody of this office." Receiving no reply, he repeated his request in January, 1847, and again in July of the same year, with no better success, copies of which letters were printed in Senate Document, No. 279, of 1867, hereto annexed.

In 1859, your memoralist, having been appointed by the Secretary of the Commonwealth, under a Resolve of the general court, to superintend the printing of the Plymouth Colony Records, requested of the Historical Society the privilege of using these volumes in the secretary's office, and received from the president of the society the following reply:—

PEMBERTON SQUARE, 28 April, 1859.

DEAR SIR,—Our rules are peremptory and unchangeable about taking out our MSS. volumes.

But the society granted leave for you to obtain anything which you might desire, in the way prescribed by our rules and under the direction of the standing committee.

Gov. Washburn, Mr. Charles Deane or Dr. Robbins will give you more particular information, on your applying to them, or either of them.

Yours resp'y,

ROBT. C. WINTHROP.

Mr. PULSIFER.

The effect of which was to deprive your memorialist of their use, which would have been of great benefit while printing the Acts of the Commissioners of the United Colonies of New England, as they contain original minutes of the commissioners, and other documents and papers belonging to the files of the general court.

By Resolve, chapter 85 of 1867, the governor was requested to take measures to ascertain whether any books, manuscripts or other documents in possession of the Massachusetts Historical Society are the property of the Commonwealth, and to procure the restoration of the same to the library of the Commonwealth. The action of the governor in the matter, and the answer of the society, appear in House Document of 1868, No. 150. Upon a message of the governor, at the last session of the general court, the subject was again referred to the governor; but as nothing further appears to have been done, your memorialist respectfully asks that such proceedings may be had in the premises that the books, manuscripts and other documents belonging to the Commonwealth may be restored; and for the further information of the legislature, he presents herewith the annexed copies of orders, reports, &c., relating to the subject-matter of this Memorial, and respectfully requests that they may be referred to as part of the same.

DAVID PULSIFER.

[House Doc. No. 454]

COMMONWEALTH OF MASSACHUSETTS.

HOUSE OF REPRESENTATIVES, May 31, 1869.

The Committee on the Judiciary, to whom was referred the memorial of David Pulsifer in relation to the Hutchinson Papers, report the accompanying Resolve. Per order,

T. L. NELSON, *Chairman.*

COMMONWEALTH OF MASSACHUSETTS.

In the Year One Thousand Eight Hundred and Sixty-Nine.

RESOLVE in relation to the Hutchinson Papers.

Whereas, A controversy has existed for many years, and still exists, between the Commonwealth and the Massachusetts Histori-

cal Society, in relation to the ownership of certain papers, now in the custody of said society, being a portion of those known as the Hutchinson Papers; and whereas the Commonwealth recognizes the fact that for many years the right of said society to the said papers was not called in question, and also recognizes the great services of the society in the field of historical research, and its claims to respectful consideration on the part of the Commonwealth; and whereas it is highly desirable that said papers should be at times in the custody of the Commonwealth; therefore,

Resolved, That the secretary of the Commonwealth is hereby authorized to make arrangements, from time to time, with said society, to take into his possession said papers, for the purposes of examination, taking copies thereof, and for any other purposes relating to his office; and the secretary is hereby directed, at the expiration of the time agreed upon, to return said papers to said society.

In the House of Representatives,
Thursday, June 3, 1869.

Resolve in relation to the Hutchinson Papers, was indefinitely postponed on motion of Mr. French of New Bedford.—*Journal of H. of R.*, 1869, *p.* 544.